SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0984-16T2

540 EQUINOX, LLC,

Plaintiff-Respondent,

v.

PRISCILLA PUCCIO,

Defendant-Appellant.

Submitted October 12, 2017 – Decided March 27, 2018

Before Judges Alvarez and Nugent.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Monmouth County, Docket No. DC-006703-16.

Mark Weissmann, attorney for appellant.

Kessler Law, LLC, attorneys for respondent (Michelle Conroy, on the brief).

PER CURIAM

Defendant, a residential tenant, appeals from a Special Civil Part order evicting her without a hearing. The trial court entered the order after determining defendant's lease was a sham. We reverse and remand for a hearing.

Defendant's brother-in-law owned the residence (the property) when defendant signed the "New Jersey Residential Lease Agreement" on January 15, 2013. The lease included this rent provision:

> The total rent for the term hereof is the sum of ONE THOUSAND DOLLARS ($1,000.00) payable on the [fifteenth] day of each month of the term. All such payments shall be made to Landlord at Landlord's address as set forth in the preamble to this Agreement on or before the due date and without demand.

Plaintiff became the owner of the property after successfully bidding on the property at a sheriff's foreclosure sale on April 19, 2016, more than three years after defendant signed the lease. Four months after the sheriff's foreclosure sale, plaintiff filed a verified complaint and "Order to Show Cause for Summary Judgment" seeking possession of the property under the authority of N.J.S.A. 2A:35-1. This statute provides, "[a]ny person claiming the right of possession of real property in the possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the Superior Court." Ibid.

The trial court did not sign the order to show cause. Defendant filed an opposing letter brief requesting the matter be transferred to the Law Division under N.J.S.A. 2A:18-60, which permits "either the landlord or person in possession [to] apply to the Superior Court, which may, if it deems it of sufficient

importance, order the cause transferred from the Special Civil Part to the Law Division."

The parties appeared in court on August 30, 2016 in response to a notice of "a show cause hearing." Plaintiff argued the matter was a simple ejectment action. Defendant countered that it was not a simple ejectment action, and the Special Civil Part had no jurisdiction, because Rule 6:1-2(a)(4) conferred jurisdiction over "[s]ummary actions for the possession of real property . . . where the defendant has no colorable claim of title or possession." Defendant contended the lease provided her with a colorable claim of possession. Defendant also noted the complaint included a second count seeking $28,000 in fair market value rent, which was beyond the Special Civil Part's jurisdiction.

Plaintiff denied defendant had a colorable claim to the property. Rather, plaintiff contended the lease was a "sweetheart lease" and a sham, and therefore void.

The trial court made no ruling. The court did not have defendant's responsive papers with the file, so it decided to conference the matter in chambers. The transcript of the proceeding contains nothing further about what happened that day. According to plaintiff's brief, "[t]he trial court and counsel agreed to reschedule the hearing so that [defendant's] opposition could be reviewed by the trial court."

The parties appeared in court a second time on September 12, 2016. After the parties reported they could not settle the dispute, the court inquired whether it was taking testimony or whether plaintiff had any witnesses. Plaintiff's counsel said her witness was ready previously, but "it didn't seem like he was going to be necessary, so [she] told him not to come today." When asked by the court if he had any witnesses, defense counsel replied he was "of the impression that [the court] was going to [m]ake a ruling on the legal question of whether or not this matter should be appropriately transferred to the Law Division based on [Rule] 6:1-2(a)(4) and other[authority] cited in [his] brief."

The court inquired whether the parties had submitted briefs, they said they had, and the court said it would track them down. The transcript of the proceeding contains nothing more. The transcript is silent as to what else, if anything, occurred that day.

Sixteen days later, the trial court entered an order granting plaintiff a judgment for possession. The order included a written statement of reasons. In its written statement of reasons, the court acknowledged that summary actions for possession of real property are statutorily authorized if a defendant has no colorable claim of title to the property. The court determined, however, that defendant's lease with the foreclosed owner was a sham and

thus defendant had no colorable claim to possession. In so doing, the court found the lease at issue to present "an identical factual scenario as Security Pacific Nat[ional] Bank [v. Masterson, 283 N.J. Super. 462 (Ch. Div. 1994)]. Based on its determination that defendant's lease was a sham, the court granted plaintiff judgment for possession.

We presume the trial court based its decision on the documents the parties submitted in support of and in opposition to the order to show cause. In support of the pleading, the General Manager (GM) of a limited liability company that was the sole member of plaintiff filed a certification and attached a copy of defendant's lease as well as an uncertified letter from a real estate agent. After identifying himself in his certification, the GM stated he had "full and competent knowledge of the facts and circumstances recited herein." Whatever he intended "full and competent knowledge" to mean, it did not equate to personal knowledge. That is evident from the certification's subsequent averment of facts based upon "information and belief," and the GM's citation to and explanation of case law in the certification.

The GM averred, among other things, "the Lease Agreement may contain a forged signature of the former owner." He stated that searches of the property disclosed two mortgages executed by the former owner "and said mortgages contain[ed] noticeably different

signatures." The mortgages were for a property with a different street address than that occupied by defendant. The GM asserted defendant and her brother-in-law had entered into the lease to defraud plaintiff, but did not explain how that could have been the case when defendant executed the lease more than three years before plaintiff became the property's owner.

In addition to the GM's certification, plaintiff submitted an uncertified letter from a realtor identifying "asking" rental values on other "comparable" homes ranging from $4000 to $5500. The realtor stated the property at issue was built in 2006, was 5900 square feet — larger than the "comparables" — and located on 2.9 acres of land. Based upon the mortgage of approximately $1,000,000 and an interest of 5.5%, the realtor opined the "estimated fair market value minimum would be $7,000.00" That was apparently the basis of the $28,000 damage claim plaintiff asserted in count two of the complaint.

In opposition, defendant submitted a certification acknowledging she was the former owner's sister-in-law and explaining her brother-in-law had agreed to lease the property to her for $1000 per month "[o]ut of sheer kindness" and consideration for her personal circumstances because that was all she could afford. Plaintiff disputed the GM had "competent knowledge of the facts and circumstances" of what he attested to in his

certification. Defendant pointed out she and her brother-in-law entered into the lease more than three years before plaintiff became the property's owner and two years before the mortgagee commenced foreclosure proceedings.

Defendant further noted that when the mortgagee commenced foreclosure proceedings, it sent plaintiff a "Notice to Residential Tenants of Rights During Foreclosure," which "advised [her] of [her] rights under the New Jersey Anti-Eviction Act and that the foreclosure case had no effect on [her] tenancy." Defendant did not state in her certification how she had knowledge of the events to which she attested.

The former foreclosed owner also submitted a certification. Referring to the GM's certification submitted by plaintiff, the former owner averred he never owned the two properties the GM claimed established a fraudulent signature. Rather, the mortgages referenced by the GM had apparently been executed by someone with the same or similar name.

Defendant contends on appeal, among other arguments, the trial court disposed of plaintiff's order to show cause as a summary action but did not adhere to procedures that govern summary proceedings. Specifically, defendant asserts the trial court failed to conduct a hearing, which, along with other errors, denied her due process.

Plaintiff counters that the notices scheduling the August 30 and September 12, 2016 proceeding dates noted each was a "show cause hearing." Plaintiff argues the trial court did not abuse its discretion by deciding the matter without conducting a hearing, because the material facts were undisputed.

We agree with defendant that the trial court should have conducted a hearing. The trial court resolved the matter on certifications not based on personal knowledge, and the court relied on a Chancery Division case with clearly distinguishable facts.

Indisputably, the Anti-Eviction Act, N.J.S.A. 2A:18-61.1 to -61.12, (the Act), applies to mortgagees. Chase Manhattan Bank v. Josephson, 135 N.J. 209, 232 (1994). The Act provides, "[n]o landlord may evict or fail to renew any lease of any premises covered by [N.J.S.A. 2A:18-61.1] except for good cause as defined in [that section]." N.J.S.A. 2A:18-61.3(a). Defendant's lease is, on its face, covered by N.J.S.A. 2A:18-61.1. Plaintiff did not claim before the trial court, nor claims now, that the grounds for eviction contained in N.J.S.A. 2A:18-61.1 exist. Consequently, if the Act applies to defendant, the trial court's eviction of defendant was improper.

Plaintiff asserted, and the trial court held, the Act did not apply because defendant's lease was a sham. The trial court based

its opinion in large part on the proposition that the facts of this case are identical to those in Security Pacific, 283 N.J. Super. 462. The facts of the cases are far from identical.

Perhaps the most significant distinction between Security Pacific and the case now before us is that the trial court in Security Pacific rendered its decision after a trial. Id. at 466. Here, the trial court rendered a decision based on documentary evidence that was in part uncertified and in part lacking in first-hand knowledge.

In addition, in Security Pacific, the foreclosed mortgagors testified at a hearing that the tenant, their father, "was attempting to perpetrate a fraud upon the court." Ibid. They claimed they had never entered into a lease with their father. Ibid. "At trial [the tenant] admitted signing his daughters' names to the purported lease" as well as pleadings that had been filed in an effort to prevent his eviction. Ibid. Thus, Security Pacific involved a tenant who forged a lease specifically to prevent a mortgagee from evicting him.

In contrast, here the scant evidence demonstrated defendant entered into the lease with her brother-in-law more than three years before plaintiff purchased the property at a sheriff's sale and two years before a foreclosure action had been filed. Plaintiff characterizing the lease as a "sweetheart lease" does

not mean the lease is a sham. The dispositive issue is whether the mortgagor and tenant entered into a lease with the purpose of obstructing the tenant's eviction following a foreseeable foreclosure action.

We are also concerned defendant was deprived of the opportunity to present evidence at a hearing that she and her brother-in-law entered into the lease for reasons other than frustrating the mortgagee. Plaintiff asserts the notices of the August and September "show cause hearings" provided defendant with ample notice and opportunity to present evidence. We have no confidence such was the case. During the time the court and parties were on the record at the hearings, the court provided no direction whatsoever as to how it intended to proceed. The scant record demonstrates the parties were confused about the court's intentions.

To the extent anything substantive occurred off the record — as implied in plaintiff's brief — such proceedings were contrary to Rule 1:2-1, which requires all such proceedings to be conducted in open court, and Rule 1:2-2, which mandates "all proceedings in court shall be recorded verbatim except, unless the court otherwise orders, [at] settlement conferences, case management conferences, calendar calls, and ex parte motions." Here, if the in-camera discussions were considered case management conferences, some type

of directive or order should have followed so that the parties were not confused about the nature of future proceedings.

For the foregoing reasons, we vacate the judgment for possession and remand this matter for a hearing in which the court shall determine, among other issues, whether defendant and her brother-in-law entered into the lease to obstruct the mortgagee or owner from obtaining possession following a sheriff's sale. The court shall also address any other issues the parties raise.

Judgment vacated and case remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.